VIEW OF THE WHOLE GROUND.

5

A BRIEF HISTORY

OF

THE PROPOSED IMPEACHMENT

OF THE

GOVERNOR OF PENNSYLVANIA:

TO WHICH IS ADDED,

HIS EXCELLENCY'S MESSAGE

OF

JANUARY 28th 1808.

COMPRISING

A DIGNIFIED AND SATISFACTORY DEFENCE.

Lancaster:

PRINTED BY WILLIAM HAMILTON,

.....

1808.

Amos Ellmaker

NOTE BY THE PUBLISHER.

The hurry in which the historical part of this work was prepared for the press, prohibited the offer of many illustrations that presented themselves in every step of the procedure. We have left the reader little more than a simple detail of events, from which he may draw his own conclusions; satisfied as we are, that the eye of honest scrutiny will well know *where* to direct its frown of disapprobation.

In the Governor's message, allusion is made to the visit of Judge Wolbert to Lancaster. His journey was undertaken in company with General Barker, an upright, honest man, then acting as high sheriff of the city and county of Philadelphia. From the certificate of General Barker, we shall here add an extract. Let the reader keep in mind that the circumstances to which it relates, occurred *before* the attempted "*persecution*" of the Governor of Pennsylvania; and then, perhaps, he will not be at a loss to determine whether it *originated* in disinterested patriotism or in the diabolical designs of disappointed knavery.

Extract from the certificate of General Barker, dated November 27th, 1806.

"Four or five days after the late general election, Dr. Michael Leib and Col. William Duane, editor of the Aurora, called at my office and wished to speak with me; I retired with them to the platform leading to my office;—Dr. Leib there informed me that Judge Wolbert had procured his securities and other qualifications required by law, for receiving his commission as sheriff; and knowing me to be the Judge's friend, told me it was in my power to render the Judge an essen-

tial service; and that they had come to ask a favor of me for him. My answer was, that I was his friend: that I considered myself his debtor, on the score of gratitude, and that I would render him any service in my power. They said they believed it; and then asked me if I would accompany the Judge to Lancaster for the purpose of obtaining his commission. I consented, believing Mr. Wolbert to be legally elected, and that no difficulty existed in obtaining his commission, except what might arise between him and the gentleman on the return with him. Doctor *Leib* then began to give me the "*instructions*" so much spoken of; and they were as follows:

"General Barker, you have the authority of Mr. Duane and myself, to state to the governor, that if he will submit to the public will, on this occasion, *we will bury the hatchet and present the olive-branch;*"—that they would cease any further to persecute the Governor or his family, and that they would bury in oblivion all that was past. The Doctor then added, with some animation, "*Now, General,* REMEMBER, *we offer him* THE SWORD AND THE OLIVE-BRANCH:—*let him take his choice.*"

They then left me. The SWORD alluded to, I took to be the sword of persecution.

JOHN BARKER."

A BRIEF HISTORY

OF THE

PROPOSED IMPEACHMENT

OF THE

GOVERNOR OF PENNSYLVANIA.

IN the House of Representatives on Monday the 30th of January 1807, Michael Leib, a member from the county of Philadelphia, being seconded by James Engle, of the same county, made the following motion.

Resolved, That a committee be appointed to inquire into the official conduct of Thomas M'Kean, governor of this commonwealth, and to report their opinion, whether the said Thomas M'Kean hath so acted in his executive capacity, as to require the interposition of the constitutional power of this House; and that the committee be authorised to send for persons, papers and records. And,

On the question, "Shall this resolution be laid on the table?"

The yeas and nays being called, were immediately reported, by the clerk, to be—yeas 39, nays 38.

The first rule for the government of the House directs that daily, after the appearance

of a quorum, the minutes of the preceeding day shall be read and "corrected as to mistake."

On the morning following Mr. Hendrix, a member from the county of York, having discovered by the reading of the minutes that his name had been omitted, informed the House thereof, and that he had voted in the *negative*.

It was evident that Mr. Hendrix was in the House when the vote was taken. Several members heard him vote in the negative. Had his vote been reported by the clerk, as it ought to have been, the resolution would have been *lost, for want of a majority*, and the subject could not again have been acted upon during the session. But it seems, that by a Legislative subtlety, (to say the least of it) the jacobins were enabled to proceed in their disgraceful machinations.

The Journal of the House states, that "the minutes were accordingly *corrected*. A question of order then arose, whether the resolution was on the table, as there were *thirty nine* yeas and *thirty-nine* nays. It being the province of the Speaker to decide, he gave his *opinion* that "a motion made and seconded (agreeably to the third rule* for the government

* 3. The name of every member presenting a petition, making or seconding a motion, shall be inserted on the journal, and all motions made and seconded, shall be repeated by the Speaker, who shall put the question distinctly in the following form, viz "As many as are of opinion (as the question may be) say

of the House) is in the power of the House, and cannot be withdrawn but with consent of the House: this consent must be expressed by a majority. The resolution of yesterday was read from the chair, consequently in the power of the House and cannot be got rid of without the voice of a majority. For illustration, suppose on a request to withdraw a motion the House should be equally divided. Would that operate a withdrawing of the motion? It certainly would not, nor can the House in any possible case, be deprived of its property, but by a majority. It hence results that the resolution remains in the possession of the House and lies on the table."

An appeal from the decision of the Speaker was then made by Mr. Ingham and Mr. Binney—predicated upon the *fact* that no proposition could lie on the table, unless the House directed it. That this was evident from daily practice. That the question was always put in these words: "*shall this resolution lie on the table?*" That it was an *affirmative* question, and could not be agreed to without a majority.

Aye," and after the affirmative voice is expressed, "As many as are of a contrary opinion say No;" and if the Speaker or any two members require it, the motion as aforesaid shall be reduced to writing, and may be withdrawn with consent of the House, by the member making or seconding the same, before amendment or decision, and if withdrawn, the proceedings had thereon shall be expunged from the journal.

On the question "is the decision of the Speaker in order?" the votes were yeas 39—nays 33.—*fourteen* members absent.

And thus it was that the minutes of the House were *corrected ! !* To be sure, Mr. Hendrix's name appears in its proper place among the nays on the original question. The yeas and nays are stated to be 39 each,— and any man of common sense would suppose, that here (as in all similar instances, time immemorial, throughout the journal,) the resolution was *lost*, through *want of a majority* to carry it. But lo ! the following page informs us that it is still before the House and cannot be got out of their hands for *want of a majority !!* What a ridiculous spectacle does this display on the *corrected* records of a deliberative body ! !

The Clerk makes a *mistake* on the Journal—The house discovers it—They have power by the very first rule of the House to correct it—They endeavour to do so—but find themselves *unable* to do it, *in consequence* of that very *mistake* of the Clerk which they had the power to correct ! !

Had it not been for this singular *mistake* of the Clerk, and the more singular decision of Simon Snyder, the house would have been rid of the vexatious resolution, and thousands of dollars would have been saved to the sate.

In that event, however, two things would have been lost to society. 1. The opportunity of knowing to what extent the *malevolence of party* will lead iniquitous men.—2. The pleasure

which every honest man will derive from perusing the defence that closes this pamphlet---a defence which must rivet conviction on the mind of every unprejudiced man—a defence which is evidently rendered more brilliant by the animated conviction of unsullied integrity.

On the second of March, 1807, the same Michael Leib presented a petition from "sundry inhabitants of the *city and county of Philadelphia*," stating,

"That they have heard with deep concern and alarm, that the election of sheriff for said city and county, has recently been set aside by the Governor," for certain reasons assigned by him, as stated in said petition, which reasons they conceive are not sufficient to justify his decision; that "the fiat of the Governor annulling said election, bears the stamp of the name and not the signature of the Governor;" and praying the House of Representatives to institute "an enquiry into this novel and unprecedented exercise of a power, unauthorised by the constitution." And said petition was read, and referred to Messrs. Leib, Lowry, Kerr, Lacock and Shewell.

The four first of those were known to be warmly opposed to the Governor.

On the day following, on motion of Wilson Smith and Nathaniel B. Boileau.

The resolution contemplating the appointment of a committee to inquire into the official conduct of the Governor, read the 30th of January 1807, was read a second time; and the resolution being under consideration;

A motion was made by Abner Lacock and Michael Leib,

To amend the same to read as follows, viz.

"Resolved, That the committee to whom was re-

ferred a petition implicating the official conduct of the Governor, be a committee to inquire and report their opinion, whether the said Thomas M'Kean, hath so acted in his executive capacity, as to require the interposition of the constitutional power of this House; and that the committee be authorised to send for persons, papers and records." and

On the question "Will the House agree so to amend?

It was determined in the affirmative.—Yeas 43 Nays 38.

In this instance the reader will draw his own conclusions of the conduct of Michael Leib in seconding the motion which placed *himself* on the *inquisitorial* committee.

On Thursday the 5th March, Michael Leib presented a petition from "sundry inhabitants" of the city and county of Philadelphia, in the same words as that presented on the Monday preceeding.

Similar petitions were presented from the said city and county, by the said Michael Leib, on the 7th, 12th and 13th of the same month.

On the 16th of March, on motion of Michael Leib and Abner Leacock it was ordered that Joseph Huston of Fayette (a violent and unrelenting enemy of the Governor) be placed on the committee of inquiry in place of James Lowry, who had been absent for some days.

And on the 30th of March, Michael Leib from the committee appointed to enquire into the official conduct of the Governor made the famous report on which the impeachment was to be grounded. This report we shall give at

full length—not even excluding *the reasoning* as it is called—*of the committee**," which for tinsel sophistry, vindictive insinuation and unmerited abuse, is perhaps unequalled in the world of composition. It is manifestly the work of Michael Leib.

REPORT OF THE COMMITTEE.

The committee appointed to enquire into the official conduct of the Governor, make report,

"That notwithstanding the shortness of the time allowed them, and the consequent narrow range of enquiry, they have been enabled to ascertain the following facts, viz.

1. That the Governor did premeditately, wantonly, unjustly, and contrary to the true intent and meaning of the constitution, render void the late election of a sheriff, in the city and county of Philadelphia;

In having refused, through the secretary of the commonwealth, to permit Judge Wolbert, the candidate highest on the return, to come into his presence, when he arrived at Lancaster, to tender his bond and that of his sureties, with the certificate of the judges.

In having issued a commission, with a blank for the names of the commissioners, to his son Joseph B. M'Kean, who inserted the names of the commissioners, who were to take the testimony, and afterwards appeared as counsel for William T. Donaldson, the adverse candidate;

In having rendered void the election, when there was an actual majority of forty-nine votes in favour of

* Leib, Lacock, Boileau, and their variegated satellites openly maintain (perhaps not improperly) that the reasoning of a committee has no connection with the resolution which accompanies it; and that the house in adopting the latter give no sanction to the former. In this view we might, in the present case, have excluded it, without subjecting ourselves to any censure on the score of partiality. But we scorn to rob the impeachment-reapers of a single straw.

Judge Wolbert, after deducting from his poll, all the illegal votes;

In having deducted from Judge Wolbert's poll, four votes given to William T. Donaldson;

In having declared twenty-six freemen and citizens to be unqualified voters, who were duly qualified; and having subtracted their votes from the poll of Judge Wolbert;

In having deducted eleven votes from Judge Wolbert's poll, without any evidence of the voters having voted for sheriff;

In having declared eight doubtful votes to be illegal, and having subtracted them from Judge Wolbert's poll;

In having declared seven votes to have been illegally rejected, when only three legal votes had been refused, and in having deducted those seven votes from the poll of Judge Wolbert;

In having, in certain cases, declared votes to be illegal, which had been given by the sons of qualified citizens, between the age of twenty-one and twenty-two years, whose fathers had died more than two years before the election; and in another case, having decided, that a vote of the same character, which had been offered for William T. Donaldson, and had been refused, to be a legal vote, and having subtracted it from the poll of Judge Wolbert.

2. That he usurped a judicial authority, in issuing a warrant for the arrest and imprisonment of Joseph Cabrera; and interfered in favor of a convict for forgery, in defiance of the law, and contrary to the wholesome regulations of the prison of the city of Philadelphia, and the safety of the citizens;

By sending for the keeper of the prison, and directing him to permit any victuals, bedding, or cloaths, that might be sent to this convict, to be given to him, although he had been sentenced to two years imprisonment at hard labor, and to be fed and cloathed as the law directs;

3. That contrary to the true intent and meaning of the constitution, and in violation of it, did he appoint Dr. George Buchannan, Lazaretto physician of the port of Philadelphia;

By granting him a commission as an officer *within* the county of Delaware, three or four days before his arrival in this state, although he had been a citizen of Maryland about seventeen years immediately preceding his appointment.

4. That under a precedent, acknowledged to have been derived from the king of Great Britain, and contrary to the express letter of the constitution, did he suffer his name to be stamped upon blank patents, warrants on the treasury, and other public official papers, and that too out of his presence.

5. That contrary to law, did he supercede Dr. James Reynolds as a member of the board of health;

By the appointment of Dr. James Hutchison before the expiration of the year designated in the law as the tenure of his commission, and which was so expressed in the commission itself.

6. That contrary to the obligations of duty, and the injunctions of the constitution, did he offer and authorize overtures to be made to discontinue two actions of the commonwealth against William Duane and his surety, for an alledged forfeiture of two recognizances of one thousand dollars each, on condition, that William Duane would discontinue civil actions against his son Joseph B. M'Kean and others, for damages for a murderous assault committed by Joseph B. M'Kean and others, on William Duane.

From even this limited enquiry the committee are led to the conclusion, that the Governor considers the constitution and the laws as mere instruments of executive convenience and of so ductile a character as to be moulded into any shape at the suggestion of passion, ambition or interest.—The examination by the commissioners and the judgment of the Governor up-

on the testimony taken by them, must be considered a novelty in the principles of evidence. The petitioners complained of an unfair election, and according to the rules of common sense, if not of common law, they ought to have proved affirmatively, that the election was illegal.—Negative testimony to invalidate an election, by which the honor and integrity of the officers of the election may be impeached, and they become subject to punishment, as well as the rights of suffrage jeopardized, could never have been admitted by any judge, who was not predetermined to render such election void; and yet the election of a sheriff for the city and county of Philadelphia was set aside, upon ground no better, and truly upon ground much worse.—The committee have had before them all the testimony upon which the Governor founded his judgment, as well as the list of illegal votes made out by his order, and they unhesitatingly affirm, that there was no shadow of cause to render void that election. The Governor, it seems, could not make up his list with the votes he supposed illegal, and thereby cover the majority of Judge Wolbert; but to reach his object, he even added thereto votes not given at all, legal votes, and votes actually given to William T. Donaldson. The avoidance of an election, under such circumstances, furnishes a melancholy testimonial of the insecurity of our rights, under the administration of the present executive magistrate. The rights of the people of the city and county of Philadelphia have been grossly trifled with, and scarcely a veil of the texture of a cobweb has been thrown over the unjust judgment of the Governor, to render void their election and their choice.

The terms of the Governor's judgment are, that "ninety-one illegal votes were received, and seven legal votes in favor of William T. Donaldson were rejected;" whereas it appears from the testimony, that only forty-two bad votes were received, and three legal votes, which would have been given to William T.

Donaldson, were rejected. The majority in favor of Judge Wolbert was ninety-four, and subtracting from his poll all the illegal votes, and the legal votes which were refused, leaves him a majority of forty-nine votes.

It appears from the testimony taken by the commissioners, and the terms of the Governor's judgment, that no question was made as to the legality of Matthew Lawler's election, and that the Governor predicated his judgment upon the want of an actual majority for Judge Wolbert, or William T. Donaldson; it must therefore, be evident, that the judgment was founded on unjust data, and in dereliction of every constitutional and legal principle. It was grounded upon a false assumption, that ninety-one illegal votes had been received, and seven legal votes had been rejected; whereas an examination of the testimony will prove demonstratively, that only forty-two votes, proved to have been illegal, were received, and three votes, proved to have been legal, were rejected.

But what will be said when the stupendous injustice is made known, that the Governor deducted four votes from the poll of Judge Wolbert, which the witnesses themselves, upon oath, declared they had given to William T. Donaldson! Not only were all votes that were illegal subtracted from the highest candidate; but even legal and doubtful votes were subtracted likewise; and to consumate the injustice, the votes actually given to William T. Donaldson were added to the list of reduction.

The committe would here ask, what security have the people of Pennsylvania for their rights, should such proceedings pass unpunished? What is the use of constitutional provisions, when the executive power can be transferred into the hands of a nephew or a son, and such an executive substitute can name commissioners, to take testimony to invalidate an election, and afterwards appear as counsel, before the same commissioners, for the contending candidate? The prohibition of the constitution that "a sheriff shall hold his office

three years, and shall not be chosen or appointed twice in any term of six years" may by such a process be rendered completely nugatory; and a favourite and profligate sheriff may continue in office as long as a governor holds his place, and the incumbent will remain the pander of an executive appetite or vengeance.

By the laws of this commonwealth, the mayor and two aldermen of the city of Philadelphia are authorised to appoint inspectors of the prison, and the inspectors so appointed are authorised by law, with the approbation of the mayor, two aldermen of the city and two judges of the supreme court, or two of the judges of the court of common pleas of Philadelphia county, to make rules and regulations for the government of all convicts confined in the said prison, not inconsistent with the laws and constitution of this commonwealth; and to prescribe their allowance of provisions, ascertaining the quantity by weight and measure and not by piece. The inspectors are further authorised to appoint the keeper of the prison, and he is bound to carry the rules and regulations, for the government of the convicts into effect; but in express violation of law, and in direct repugnance to the rules and regulations established by the inspectors, did the governor send for the keeper of the prison, and direct him to contravene the established rules.—The constitution gives to the governor the power of pardoning crimes; but it conveys no authority whatever, to constitute himself an inspector or a gaoler; neither does it authorise him to contravene the laws, nor to give directions to the keeper of a prison to violate both law and duty.—The consequences of such an interference, in favour of convicts, are incalculable, not only as they relate to the criminals themselves, but to the citizens.—The establishment of such a precedent must tend to loosen the restrictions by which those depredators on society are made to atone for the injuries done by them, and to furnish them with means to overcome the restraints under which they labour; as well as to elude the penalties of the law. They may, thereby, be enabled to conspire to

effect their enlargement, to attain means to secure it, and society become thus exposed to all the mischiefs of encouraging a band of ruffians, and letting them loose again to depredate upon the commonwealth.

The appointment of a citizen of another state to an important and responsible office in this, not only conveys a bitter sarcasm upon the qualifications of our own citizens for office, but is in total disregard of the provisions of the constitution. The Lazaretto Physician resides *within* the county of Delaware, and the constitution emphatically declares that "no person shall be appointed to an office *within* any county, who shall not have been a citizen and inhabitant therein one year next preceding his appointment, if the county shall have been so long erected."

Dr. Buchannan had been an inhabitant and citizen of Maryland seventeen years preceding his appointment, and the commission under which he acts, bears date on the 4th of July, 1806, three or four days before his arrival in this state. The constitution forbids any person from exercising the elective franchise, unless after two years residence, and the payment of a state or county tax; even the non-payment of a tax a few days beyond the two years, was held by the Governor to be a disqualification; and yet a person not a citizen at all, who had manifested no interest in, or attachment to, the state, either by residence or contribution, was appointed to a lucrative and important office. No person can administer the office of a constable without the previous qualifications of citizenship; and yet, an office of far greater responsibility and interest, and which involves the safety, the property, the health and the lives of the citizens of the city and county of Philadelphia, was conferred by the governor upon a stranger, because he was his son-in-law, as much as an alien to our constitution, as if he had been imported from Siberia.

The fashion which has been introduced by the governor, of having his name stamped upon the evidences of property, by means of a fac simile, and that too before they were completed by the proper officers, and

passed through the necessary forms, is calculated to produce endless strife and contention, and to render uncertain the tenure of property conveyed by the state, and for which it has received a valuable consideration.

The evil cannot be considered as trifling, when we reflect, that warrants on the treasury, and the laws of the commonwealth have been subject to the same unconstitutional process of verification. It is ascertained by the committee, that the name of the governor has been stamped upon public papers requiring his signature, and that too out of his presence ; nay, so far has this practice been carried, that the judgment of the governor, rendering void the late election of a sheriff for the city and county of Philadelphia, was never seen by him, either before, or after his name was annexed. It can scarcely be necessary for the committee to enumerate the frauds and the mischiefs, and the distrusts, which must result from a practice so repugnant to the constitution. The possessor of his fac simile becomes the governor to a certain extent, and instead of the wholesome restraints of the constitution and the laws upon imposition and fraud, the interests of the comwealth, as well as those of its citizens, may be jeopardized by an usurper of the governor's fac simile. The constitution requires, that the governor shall "*sign*" all bills which shall have passed both houses, if he approve them ; and by what mistical interpretation, a stamp of his name, impressed by another hand, can be made to comport with the injunctions of the constitution, must be left to those casuists to determine, who are skilled in the scenery and ledgerdemain of royal governments.

The removal of Dr. James Reynolds from the office of the member of the board of health, the committee conceive to be a palpable infraction of the law which created the office. The constitution recognizes a tenure of office during good behaviour, and its silence on the subject of offices, not held during good behaviour, or for a specified term, has led to the conclusion, that they are to be held during the pleasure of the gover-

nor; and upon this construction has the tenure during pleasure been established. The law creating the office of a member of the board of health, specifies the tenure of office to be for one year, and the commission of the governor is in accordance with the terms of the law; and to exemplify the governor's own sense of the law, the usual phrase which accompany a commission during pleasure, are erased from the commission; leaving no doubt of the governor's own conviction, that the tenure of office of a member of the board of health was not during the pleasure of the governor, nor the commission revocable by him.

The compromise offered by the governor to William Duane, is of a character truly dark and alarming. The outrage committed by his son Joseph B. M'Kean and others, upon Mr. Duane, transcends any thing in baseness and barbarity, ever perpetrated among us by men pretending to the honor of a soldier. After having beaten and bruised him until he was lifeless, they raised him from the earth on which he was prostrate; that one of them might again knock him down; and these heroes of our constitution and laws, finished their murderous assault, by whipping the insensible body of a man, that they had rendered lifeless by previous barbarity. For this inhuman treatment Mr. Duane appealed to the laws of his country, and from them expected a redress of his wrongs. On a charge of an intention to commit a breach of the peace; Mr. Duane had been previously arrested and was held toa surety of the peace: and under a pretext that he had been guilty of a breach of the peace, and a consequent forfeiture of recognizance, by the publication of certain paragraphs in the Aurora, charged to be libellous, he and his surety were summoned by the then Attorney General, to answer for the amount of their recognizances. Mr. Duane had instituted actions for damages against Joseph B. M'Kean, and some of his coadjutors and to relieve his son and those concerned with him from the penalty of the law, the Governor offered to discontinue the suits of the commonwealth against William Duane and his surety, on condition thatMr. Duane would withdraw the actions against his

son Joseph B. M'Kean and his associates. Need the committee make any comment upon a proposition to commute an outrage so flagitious and unprecedented, and by a Governor constitutionally enjoined to see the laws faithfully executed!

From the preceding facts your committee are impelled to declare, that however unwilling they might be to arraign the Chief Magistrate upon charges trivial and unsubstantial, when the fundamental principles of our constitution are invaded, it would be treason against the public liberty, and a disgraceful abandonment of public duty, not to demand the punishment of the aggressor.—Public station ought to render no man inviolable, and the greater the trust the more rigid should be the responsibility.—If your laws justly punish a man for a pettit larceny, surely he ought not to escape the penalty of his bond, who assails the vitals of our constitution. Even ignorance of law is held to be no excuse for transgression; but where knowledge illumines the path of the public functionary, how much greater is the guilt of his sinning against conviction?

"Crimes, said the enlightened and humane Beccaria, are only to be measured by the injury done to society; they err, therefore, who imagine that a crime is greater, or less, according to the intention of the person by whom it is committed; for this will depend on the actual impression of objects on the senses, and on the previous disposition of the mind; both which will vary in different persons, and even in the same person at different times, according to the succession of ideas, passions and circumstances. Upon that system, it would be necessary to form not only a particular code for every individual, but a new penal code for every crime. Men often with the best intention do the greatest injury to society, and with the worst, do it the most essential services." If then the principle be correct, that crimes are only to be measured by the injury done to society, he surely must be guilty of the greatest crime, who depredates upon the great character of our rights.

The infraction of the law, which embraces the case of an individual, must be considered as truly venial, when contrasted with the violation of a constitution, upon which depends the fate and happiness of a whole community.

The committee deem it superfluous to sustain the resolution which is submitted, by an appeal to the patriotism or the intelligence of the House.—They are aware, that they are anticipated by its judgment and its integrity. The facts speak so loudly for themselves, that the feeble voice of the committee cannot be raised to reach their tone. Justice and the public welfare demand punishment. Do we desire to preserve our Constitution in its letter and its spirit? Then punish the infractor of it.—Do we desire the government of laws instead of that of the will of a public functionary? Then make him amenable to justice who dares to substitute his will for that of the laws.—Do we desire to preserve our republican institutions? Then permit no man to trample upon them with impunity.—Do we hold the right of electing our public functionaries to be the essence of free government, and its exercise to be dear to the freemen of Pennsylvania? Then render him constitutionally accountable, who by an arbitrary *fiat* has laid it prostrate. Do we consider virtue as the vital principle of republican government? Then punish the officer who attacks republican virtue in her citadel; who, in disregard of public sentiment and public duty; and in defiance of solemn obligation treats the people as his patrimony, and their rights as his inheritance.

Under a sense of imperious duty, and the solemnity of the obligation under which they act as Representatives of the people of Pennsylvania, and from a conscientious conviction, the committee offer the following resolution, viz.

Resolved, that Thomas M'Kean, Governor of this Commonwealth, be impeached for high crimes and misdemeanors.

On the 7th of April the House went into committee of the whole, James Engle in the chair, on the report of the committee—but no question was taken.

On the evening of the 8th, the House again resolved itself into a committee of the whole, Mr. Engle in the chair, on the resolution relative to the impeachment of the Govornor. And after some time the Speaker resumed the chair, and the chairman reported, that the committee had agreed to said resolution, and

On the question, "Will the House agree to the report of the committee of the whole?"

A motion was made by Mr. Boileau and Mr. Gross, to refer the whole subject to the early attention of the next legislature, and

On the question, "Will the House agree so to refer?"

A motion was made by Mr. Ogle and Mr. Kimmel,

To postpone the said motion together with the resolution till to-morrow;

Which was agreed to.

On the 9th, the House resumed the consideration of the report, and (according to the Journal) "the *resolution* thereto attached being under consideration."

A motion was made by Mr. Welles and Mr. Shewell,

To postpone the motion made yesterday, together with the resolution, generally, and

On the question, "Will the House agree so to postpone?"

The yeas and nays were called by Mr. Leib and Mr. Binney, and are as follow, viz.

Yeas.—Messrs. Acker, Apple, Barnet, Biddle, Binney, Boyd, Brobst, Bull, Carver, Clawges, M. Davis, Gardner, Gish, Gress, Hulme, Ingham, Ioder, Johnson, Kelton, Kimmel, Lobingier, Martin, Maxwell, M'Clelland, M'Comb, Nigh, Pennock, Radcay, Ramsey, Rinker, Rose, Shaeffer, Shewell, Shriver, C. Smith, Walter Smith, Trimble, Webb, Welles and Wright.—40.

Nays.—Messrs. Anderson, Banks, Boileau, Brown, Bucher, Cunningham, I. Davis, Dechert, Engle, Gross, Hendrix, Huston, Jennings, Kerr, Lacock, Leib, Lowry, M'Clure, M'Cune, M'Farland, M'Kinney, Mechling, Moore, Ogle, Orr, Pepfer, Piper, Rankin, Rupert, Sheetz, Shearer, Shulze, I. Smith, R. Smith, Wilson Smith, Spangler, Starne, Stevenson, Tarr, Thompson, Wallace, Weber, Wilson and Snyder, *Speaker.*—44.

So it was determined in the negative.

The original motion recurring,

On the question, "Will the House agree to recommend the subject to the early attention of the next Legislature?"

The yeas and nays were called by Mr. Ingham and Mr. Hulme, and are as follow, viz.

Yeas.—Messrs. Anderson, Banks, Boileau, Brown, Bucher, I. Davis, Dechert, Engle, Gross, Hendrix, Huston, Jennings, Kerr, Lacock, Leib, Lowry, M'Clure, M'Cune, M'Farland, M'Kinney, Mechling, Moore, Ogle, Orr, Pepfer, Piper, Rankin, Rupert, Sheetz, Shearer, Shulze, I. Smith, R. Smith, Wilson Smith, Spangler, Starne, Stevenson, Tarr, Thompson, Wallace, Weber, Wilson and Snyder, *Speaker*—43.

Nays.—Messrs. Acker, Apple, Barnet, Biddle, Binney, Boyd, Brobst, Bull, Carver, Clawges, Cunningham, M. Davis, Gardner, Gish, Gress, Hulme, Ingham, Ioder, Johnson, Kelton, Kimmel, Lobingier, Martin, Maxwell, M'Clelland, M'Comb, Nigh, Pen-

nock, Radcay, Ramsey, Rinker, Rose, Sheaffer, Shewell, Shriver, C. Smith, Walter Smith, Trimble, Webb, Welles and Wright.—41.

So it was determined in the affirmative, and

Thus far go the proceedings of last Session.

On the 7th of December last, Abner Lacock from the committee to report the unfinished business of last session, among other items reported the following resolution; (No. 23.)

"Resolved that Thomas M'Kean, Governor of this Commonwealth, be impeached of High Crimes and Misdemeanors."

On the following day,

"On motion of Mr. Lacock, seconded by Mr. Jennings, the report No. 3, of the committee appointed to examine the journal and files of the late House, and to report the unfinished business, read yesterday, was read the second time; and the 23d item being under consideration,

A motion was made by Mr. Sergeant, seconded by Mr. Biddle, to postpone the further consideration thereof, until the second Monday in January next; and that the documents and evidence laid before the late House, by the committee appointed to inquire into the official conduct of the Governor, be printed for the use of the members; and

On the question, "Will the House agree to the same?"

The yeas and nays were called for by Mr. Leib and Mr. Sergeant, and are as follow, viz.

Yeas.—Messrs. Acker, Apple, Barnet, Beach, Bethel, Biddle, Brobst, Clawges, Darlington, Eichelberger, Espy, Evans, Gemmill, Gettys, Gisch, Hare, Hulme, Ingham, Ioder, Kepner, Kimmell, Lobingier,

Martin, Maxwell, M'Clellan, M'Comb, M'Sherry, Miner, Pennock, Porter, Ramsey, Rinker, Rose, Rupert, Savitz, Sergeant, Shaeffer, Sherman, Shewell, C. Smith, Trimble, *Worthington* and Wright—42.

Nays.—Messrs. Banks, Boileau, Brown, Bucher, Davis, Dysart, Engle, Griffin, Gross, Heyser, Jennings, Kerr, Lacock, Leib, Lowry, M'Clay, M'Clure, M'Farland, M'Kinney, Mechling, Moore, Murray, Ogle, Orr, Parke, Pepfer, Rankin, Rupert, Shearer, Sheetz, Shulze, I. Smith, R. Smith, W. Smith, Starne, Starret, Stevenson, Tarr, Thompson, Wallace, Weber and Snyder, *Speaker*—42.

So there being an equal number of votes, the motion was not carried.

Now the reader will please to bear in mind, on reviewing the foregoing vote, that at the time it was taken, the whole of the *conventionalists* were present; while on the part of the *constitutionalists* Mr. Kelton was unavoidably absent, and the vacancy occasioned by the death of Mr. Carver, could not well be supplied before the Christmas *vacation*. Therefore, in this situation of the House, Michael Leib and his partizans very fondly calculated on carrying the resolution for an impeachment.

The motion of Mr. Sergeant was grounded upon the consideration, that on a subject in which the people of Pennsylvania were so highly interested the state representation ought to be complete.

But the *conventionalists* seemed to think otherwise; and, not calculating that Mr. Worthington* would leave their ranks on any following vote, proceeded with full confidence of success.

* Mr. W. was the only conventionalist who opposed the resolution.

A motion was made by Abner Leacock, seconded by Ebenezer Jennings, to refer the resolution to a select committee.

On this question the yeas and nays were as follow:

Yeas.—Messrs. Banks, Boileau, Brown, Bucher, Davis, Dysart, Engle, Griffin, Gross, Heyser, Jennings, Kerr, Lacock, Leib, Lowrey, Maclay, M'Clure, M'Farland, M'Kinney, Mechling, Moore, Murray, Ogle, Orr, Parke, Pepfer, Rankin, Rupert, Shearer, Sheetz, Shulze, I. Smith, R. Smith, W. Smith, Starne, Starret, Stevenson, Tarr, Thompson, Wallace, Weber and Snyder, *Speaker*—42.

Nays.—Messrs. Acker, Apple, Barnet, Beach, Bethel, Biddle, Brobst, Clawges, Darlington, Eichelberger, Espy, Evans, Gemmill, Gettys, Gisch, Hare, Hulme, Ingham, Ioder, Kepner, Kimmell, Lobingier, Martin, Maxwell, M'Clelland, M'Comb, M'Sherry, Miner, Pennock, Porter, Ramsey, Rinker, Rose, Savitz, Sergeant, Shaeffer, Sherman, Shewell, C. Smith, Trimble, *Worthington* and Wright—42.

There being again an equal number of votes, the motion was not carried.

The resolution now laid quietly on the table from *the 8th day of December, until the 15th of January.* The *conventionalists* never ventured to call it up,—for they saw no opportunity of carrying it—no *constitutionalist* left his post—no advantage could be taken.

At length on the 15th of January, when every member of the House was present, the constitutionalists being by this time convinced of the intention of their adversaries.

A motion was made by Mr. *Shewell* and Mr. *Hulme* (both friends of the constitution) to proceed to the consideration of "the resolution of the late House relative to the impeachment of the Governor."

Now, what must be the astonishment of the reader, when he is informed, that the very men who were apparently so eager for the impeachment—the very men who had so warmly advocated this resolution—were themselves afraid to meet it, and actually voted against taking it up.

They knew that by permitting it to lay over until the next session, they would at least be able to continue the obloquy and suspicion with which they had attempted to surround the character of the Chief Magistrate. Under this view, we find them with unblushing effrontery —with a zeal for persecution, almost unparallelled in the history of legislation—with vindictive obstinacy,—refusing even to take up the subject *for consideration ! !*

The yeas and nays were as follow;

Yeas.—Messrs. Acker, Apple, Barnet, Beach, Bethel, Biddle, Brobst, Clawges, Cope, Darlington, Eichelberger, Espy, Evans, Gemmill, Gettys, Gisch, Hare, Hulme, Ingham, Ioder, Kelton, Kepner, Kimmell, Lobingier, Martin, Maxwell, M'Clellan, M'Comb, M'Sherry, Minor, Pennock, Porter, Ramsey, Rinker, Rose, Savitz, Serjeant, Sheaffer, Sherman, Shewell, C. Smith, Trimble and Wright.—43

Nays.—Messrs. Banks, BOILEAU, Brown, Bucher, Davis, Dysart, Engle, Griffin, Gross, Heyser, Jennings, Kerr, Lacock, LEIB, Lowry, Maclay, M'Clure, M'Farland, M'Kinney, Mechling, Moore, Murray, Ogle, Orr, Parke, Pepfer, Rankin, Rupert, Shearer, Sheetz, Shulze, I. Smith, R. Smith, W. Smith, Starne, Starret, Stevenson, Tarr, Thompson, Wallace, Weber, Worthington, and SNYDER, speaker—43.

The House being equally divided the motion was not carried.

This vote shews the exact state of parties in the present House of Representatives. The first 43 are Constitutionalists—the latter are the advocates of a convention.

On the 27th of January, the resolution, with the malicious hopes of its friends, received the death-blow. It was again called for by Mr. Shewell, seconded by Mr. Tarr, who, contrary to all reasonable expectation, voted for it. His vote, however, would have been unavailing on the other side, as the absence of Abraham M'Kinney (a conventionalist) would alone have enabled the friends of the constitution to bring it before the House. The votes were, for taking it up, 44, (all the constitutionalists and Mr. Tarr)—against it 41.—

A motion was then made by Mr. Porter, seconded by Mr. Shewell, to postpone the resolution *generally*:—which amounts to a negative.

The votes were as follow:

Yeas.—Messrs. Acker, Apple, Barnet, Beach, Bethel, Biddle, Brobst, Clawges, Cope, Darlington, Eichelberger, Espy, Evans, Gemmill, Gettys, Gisch, Hare, Hulme, Ingham, Ioder, Kelton, Kepner, Kimmell, Lobingier, Martin, Maxwell, M'Clellan, M'Comb, M'Sherry, Minor, Pennock, Porter, Ramsey, Rinker, Rose, Savitz, Serjeant, Sheaffer, Sherman, Shewell, C. Smith, Trimble, Worthington and Wright—44.

Nays.—Messrs. Banks, Boileau, Brown, Bucher, Davis, Dysart, Engle, Griffin, Gross, Heyser, Jennings, Kerr, Leacock, Leib, Lowry, M'Clay, M'Clure, M'Farland, Mechling, Moore, Murray, Ogle, Orr, Parke, Pep-

fer, Rankin, Rupert, Shearer, Sheetz, Shulze, I. Smith, R. Smith, W. Smith, Starne, Starret, Stevenson, Tarr, Thompson, Wallace, Weber and Snyder, *Speaker*.—41.

So it was determined in the affirmative—*and thus endeth the resolution and the impeachment! Having cost the State thousands of dollars, and excited, in a considerable degree, the sensibility and the "angry passions" of the people,*—its projectors have "their labour for their pains!"

We feel particular satisfaction in being able here to close the narrative of this disgraceful transaction and invite the attention of the reader to the message of the Governor. Those who give it a careful perusal will be amply repaid.

To the House of Representatives of the Commonwealth of Pennsylvania.

GENTLEMEN,

A long and dangerous sickness; the sympathy of friends; and the advice of physicians; deprived me of an opportunity to peruse the journal, or to have the least knowledge of the proceedings, in relation to an impeachment of my official conduct, for more than a month after the termination of the last session of the General Assembly. And, since that period, a proper respect for the exercise of constitutional powers has restrained every disposition, on my part, to answer the charges, which have been exhibited against me, while those charges continued a subject of delibera-

tion. But the delicacy, which has thus recognized your constitutional jurisdiction, must not be allowed to absorb every consideration, that is due to my own fame, to the feelings of my family, and to the opinion of the world. The accusation, though not confirmed by the ultimate vote of the House, has been deliberately framed, has been openly discussed, and will pass, among the legislative records, into the hands of our constituents, and our posterity, with all its concomitant semblance of proof, and asperity of animadversion. The decision, that expresses your renunciation of the impeachment, affects me, indeed, with its justice, and its independence; but it is a decision, which precludes the employment of the regular means of defence, before a competent tribunal, and, therefore, compels me, for the purposes of vindication, to claim a page in the same volume, that serves to perpetuate against me the imputation of official crimes and misdemeanors.

It is incompatible, gentlemen, with my view of the solemnity of the occasion, to descend to the language of invective or complaint. By exposing the depravity of other men, I should do little to demonstrate my own innocence; and an expression of sensibility, at any personal indignity, that has been inflicted, might be construed into an encroachment upon the freedom of legislative debate. But the tenor of my public and private life, will, I hope, be sufficient to repel every vague, and declamatory

aspersion. The discernment of our constituents will readily detect any latent motive of hatred and malice. The justice of the legislature upholds an ample shield against the spirit of persecution: And the conscious rectitude of my own mind will yield a lasting consolation, amidst all the vicissitudes of popular favour and applause.

Without presuming, then, to trace the progress of the accusation, or arraign the correctness of any incidental decision; or even to deprecate the harshness of the terms in which the denunciation of the committee is expressed; I shall, distinctly, answer the several charges exhibited in the report of that committee on the thirtieth of March last, as the foundation, for adopting a resolution "That Thomas M'Kean, Governor of this Commonwealth be impeached of high crimes and misdemeanors." But permit me to premise, that no part of this defence rests, either upon an arrogant claim of infallibility, or an humiliating appeal to compassion. When it is seen, that all the acts imputed to me, as criminal, are of a recent date, it would not, perhaps, be unreasonable to hope that a period of more than forty years, previously passed in the service of my country, without guile and without reproach, would awaken prepossessions, in favor of the political and moral integrity of my conduct. Every discrimination, however, on that ground is explicitly waved. Nothing more is asked in my case, than justice would, in the display of

its impartiality, as well as of its energy, extend to the case of every other citizen. By the constitution, it is declared, that the Governor "shall be liable to impeachment, *for any misdemeanor in office.*" Whether for "high crimes" (the super-added words of the resolution) and misdemeanors, not committed in office, an impeachment can be sustained, is immaterial to the object before us; but the common sense and common honesty of mankind must admit, that it is the essence of crimes and misdemeanors, (without which there can be no impeachable offence) that an *injurious* act, should be *wilfully* committed, either *corrupt* in its motive, or *unequivocally unlawful* in its perpetration. That I may have erred in judgment; that I may have been mistaken in my general view of public policy; and that I may have been deceived by the objects of executive confidence, or benevolence; I am not so vain, nor credulous, as to deny; though in the present instance, I am still without the proof, and without the belief; but the firm and fearless position which I take, invites the strictest scrutiny, upon a fair exposition of our constitution and laws, into the sincerity and truth of the general answer, given to my accusers:—that no act of my public life was ever done, from a *corrupt motive;* nor without a deliberate opinion that the act was *lawful and proper* in itself.

First Charge.

"That the Governor did premeditately, wan-
"tonly, unjustly, and contrary to the true in-

" tent and meaning of the constitiuton, render " void the late election of a sheriff in the city " and county of Philadelphia."

Answer.

The first section of the sixth article of the constitution provides, that " sheriffs and coroners shall at the times and places of election of representatives be chosen by the citizens of each county : *Two persons* shall be chosen for each office, *one of whom* for each, respectively, shall be appointed by the Governor." And to decide contested elections, the act of the 15th of February 1799, provides, " that the Governor shall be a competent judge of the election of every person, who shall be returned to serve as sheriff, or coroner; and for that purpose may send for papers, persons, and records, and may summon and compel witnesses to appear before him, and examine them upon oath or affirmation; or, at his discretion, may direct the examination of such witnesses, who may dwell forty miles or more from the seat of government, to be taken in writing by commissioners appointed by him for that purpose: provided opportunity be given to the parties to be present, and to examine and cross-examine, the said witnesses." It is obvious from the terms of the constitutional provision, which has been cited, that the two candidates for the office of sheriff, whose number of *lawful* votes, respectively, exceeds the number given for any other candidate, are entitled to be returned to the Governor; and, in relation to those candi-

dates, the lowest is as constitutionally the object of the Governor's appointment, as the highest in votes. On a question therefore respecting the fairness of an election, whatever proves that either of the candidates ought not to have been placed on the return, will, generally, establish the right of some other candidate; or, at least, shew, that the Governor's power of selection cannot be exercised (as it ought to be) upon two persons, *actually* chosen by the citizens.

The judges of the general election of the city and county of Philadelphia, held in October 1806, certified to the Governor that Frederick Wolbert and Matthew Lawler were the two highest candidates for the office of sheriff; the former having 3,905, and the latter 3,846 votes: but it also appeared from their certificate, that William T. Donaldson had 3,811 votes; being 94 less than the highest, and 35 less than the lowest candidate on the return. Unless there had been some doubt in the minds of the judges, respecting the fairness of the election, the number of votes for a third candidate, would not have been certified. If, then, Frederick Wolbert and Matthew Lawler, or either of them, had been certified as elected; or if the election were rendered doubtful, in consequence of a number of unlawful votes, exceeding both, or either of the nominal majorities; William T. Donaldson might justly complain of the privation of his rights; and the people would naturally enquire into the suppression, or pro-

bable suppression, of their legitimate voice. Such an inquiry was, accordingly, instituted in due time and form by many respectable citizens of the city and county of Philadelphia; who alledged, that so great were the irregularities and frauds committed; so many illegal votes were allowed, and so many legal votes were rejected; that independent of these circumstances, the result of the election would have placed William T. Donaldson higher upon the return of sheriff elect, than either Frederick Wolbert or Matthew Lawler. And upon this representation, it became the indispensible duty of the Governor, to investigate the facts, and to decide, judicially, upon their operation.

After several unsuccessful attempts to obtain commissioners (two commissions being refused and returned) for examining the witnesses who dwelt more than forty miles from the seat of government; and with a solicitude, for the sake of the public as well as of the parties, to bring the controversy to a speedy termination: the Governor requested the Attorney General, residing in Philadelphia, to fill up the blank, left in a commission, with the names of such of the persons enumerated in a list, that accompanied the commission, as should accept the trust; and if any of them declined, then to insert the name of a disinterested and competent substitute. That officer, acting upon the wish of the Governor, that the investigation should be free from every suspicion of prejudice, or partiality, asked Mr. Franklin (a legal friend of Messrs.

Wolbert and Lawler) to be the substitute, in the only vacancy that occurred; and when Mr. Franklin declined, alledging a previous engagement, as counsel in the case, Mr. Hallowell's name was inserted in the commission, and approved by the Governor, with the greater satisfaction, from the gentleman's candid avowal, that he had voted, at the election, for Mr. Wolbert.

The commission bears date the 28th of October 1806; and it was returned, with upwards of two huudred depositions, on the 19th of January 1807. The examination of this volume of evidence, during the session of the Legislature, and while the Governor was afflicted with a severe malady, was a laborious and difficult task. When, however, it was completed, the result seemed to be plain and incontrovertible, that ninety-one illegal votes had been received, and that seven legal votes had been rejected, at the election; and consequently, it only remained to consider, upon what principles the judgment should be pronounced. The evidence from which this result was deduced will be preserved on the files of the Legislature, and it would be tedious if not useless, to review it here. In some cases, there is perhaps room for a fair difference of opinion, as to the rights of the voters, but in no case is there room to suppose, that, on the Governor's part, there has been a *willful perversion* of the facts. Under every aspect, indeed, which even the report of the committee of impeachment presents, the

return of the election could not be sustained; for, it is not denied, nay, it is admitted, that as the number of illegal votes exceeded thirty-five, Mr. Wolbert's majority must be reduced to forty-nine: while Mr. Lawler ceased to be entitled in law, or justice, to a place on the return, in exclusion of Mr. Donaldson. It is not necessary to declare, whether the Governor would have preferred Mr. Donaldson, or any other person, lawfully placed on the return with Mr. Wolbert. It is sufficient to observe, that the constitutional opportunity of selection has not been afforded.

But, satisfied that great irregularities had occurred at the election; and convinced that the number of illegal votes was greater than the nominal majority of Mr. Wolbert, or Mr. Lawler (a conviction that has been confirmed, by the maturest consideration of the depositions) the Governor deemed it his duty, upon precedent as well as upon principle, to vacate the return. The evidence, however, which rendered it uncertain, whether Messrs. Wolbert or Lawler were the two persons chosen by the citizens for the office of Sheriff, was not of a nature to establish the claim of any other candidate; and no alternative was left, but, adjudging the election void, to certify, agreeably to the constitution, that the Sheriff, then in office, was entitled to act, until a successor through the medium of another election, shall be duly qualified. The Governor, accordingly, certified his judgment upon the case, in an instrument, un-

der the Great seal of the state, dated the sixteenth of February 1807; and although a copy of that instrument accompanies the report of the committee of impeachment, the report alledges, that "it appears from the testimony taken by "the commissioners, *and the terms of the Gov-* "*ernor's judgment*, that no question was made "as to the legality of Matthew Lawler's elec- "tion, and that the Governor predicated his "judgment upon the want of an actual major- "ity for Judge Wolbert, or William T. Don- "aldson." But, in opposition to this allegation, it will be found, by examining the documents, that the complaint was general, of irregularities and frauds committed at the election, "but for "which the majority of votes would have ap- "peared to be in favor of William T. Donald- "son, instead of Frederick Wolbert and Mat- "thew Lawler;" that the commission to enquire, was co-extensive with the complaint; that the testimony was also general; and that the terms of the Governor's judgment (speak- for themselves) were these; "and whereas it "appears, that for the office of Sheriff of the "city and county of Philadelphia aforesaid, "3905 votes were given for Frederick Wolbert, "and 3846 *votes for Matthew Lawler*, the can- "didates returned, and, also, 3811 votes for "William T. Donaldson;" but, inasmuch as "(elections under the constitution of Pennsyl- "vania being by ballot) it cannot be ascertained "*from which of the candidates* the said 91 illegal "votes ought to be substracted, it consequently

"does not appear *which of the three candidates*, "Fred'k Wolbert, Mat. Lawler or Wm. T. Don- "aldson, had a majority of legal votes, *and there- "fore no* TWO *candidates being duly returned to "me, the election is void and must be set aside.*"

Such is the unvarnished narrative of a transaction, which has been stigmatized with the most opprobrious epithets; and which under the denomination of "a high crime and misdemeanor," has threatened to ruin the good name, and peace of mind, of an ancient (nor, when arraigned, is it vanity to add) of a long tried, and faithfull public servant! But in aggravation of the general charge, there is a detail of particular circumstances, as ingredients in the Governor's offence, that must not be entirely overlooked.

1st. *It is deemed criminal*, "that the Governer refused to permit judge Wolbert, the candidate highest on the return, to come into his presence, when he arrived at Lancaster, to tender his bond, and that of his sureties, with the certificate of the judges."

It is answered, that at the time of Mr. Wolbert's arrival in Lancaster, the enquiry into the legality of his election had been instituted; and the Governor was placed, by the law, in the relation of a Judge, between him, and his opponents. As a Judge, therefore, it would have been improper to receive a communication, upon the subject of the election; from one of the parties, in the absence of the other. So far as respects the tender of an official bond, a personal communication was unnecessary, if

not irregular; since the constitution and laws render the office of the Secretary of the Commonwealth, the legitimate depository of such applications and documents. So far as respects any design to solicit or influence a decision of the depending contested election, in favour of Mr. Wolbert, the visit was an insult and a crime. Now Mr. Wolbert was accompanied to Lancaster by his friend General Barker; and General Barker has since declared, upon oath, to the committee of impeachment, "that his primary object was to introduce judge Wolbert to the Governor, and to use his influence, if any he had, with the Governor, to obtain Judge Wolberts commission for Sheriff." But it has, also, been developed, upon the oath of General Barker, that an attempt was then to be made to obtain a commission for Mr. Wolbert, by offers of favour, or menaces of vengeance; by giving to the Governor the option of "the sword or the olive branch;" and by a denunciation (which General Barker swears came from the tongue of Dr. Michael Leib, the chairman of the committee of impeachment, and similar menaces of assassination, were contained in anonymous letters received through the post-office) "that if the old scoundrel, or old rascal, did not accede to the proposals, the would pursue him to the grave." The Governor it is true, refused to permit judge Wolbert to visit him; but who will say, upon a consideration of these facts, that the refusal was criminal in its motive, unlawful in its consequences, or (since

the recent choice of Mr. Donaldson by a majority of 138 votes) injurious to the rights of suffrage?

2nd. *It is deemed criminal* "that the Governor issued a commission, with a blank for the names of the commissioners, to his son Joseph B. M'Kean, who inserted the names of the commissioners, who were to take the testimony, and afterwards appeared as counsel for William T. Donaldson, the adverse candidate."

It is answered, that by the law, the Governor is authorised to appoint Commissioners; but the mode, in which the appointment shall be made, is not prescribed. If any person be authorised to do a particular act; after it is done by another, it is as valid in the execution of the authority, generally speaking, as if he had done it himself. It was found difficult to obtain commissioners; and when a third commission issued in blank, it was accompanied with a list of names framed by the Governor, from which all the commissioners except one were taken. In the strictest sense of the word, therefore, those commissioners were appointed by the Governor. Mr. Hallowel's name, however, was not in the list; but the insertion of his name in the commission, was approved and adopted by the Governor, before the commissioners proceeded to execute their trust. In appointments to offices, not merely ministerial (as this appointment was) the Governor must frequently act upon the recommendation of others; and blank commissions,

licences, writs, &c. under the State Government, as well as blank documents for custom-houses and other offices, under the General Government, are in constant use. But, after all, remark the liberal manner in which the confidence reposed in the Attorney-General was employed, and who will say, upon a just consideration of the facts, that the conduct of the Governor was criminal in its motive, was unlawful in its consequences, or tended in any degree to render void the election of Mr. Wolbert?

Second Charge.

"That the Governor usurped a *judicial* au-
"thority, in issuing a warrant for the arrest
"and imprisonment of Joseph Cabrera; and in-
"terfered in favour of a convict for forgery,
"in defiance of the *law*, and contrary to the
"wholesome regulations of the prison in Phi-
"ladelphia, and the *safety* of the citizens."

Answer.

This charge consists of two branches, which may be separately considered. First, The usurpation of *judicial* authority. Second, The *unlawful interference* in favor of a convict.

1st. Joseph Cabrera was appointed by the King of Spain, an Adjunct to the Secretary of the Spanish Legation; and, in that character, had been received by the President of the United States. In the month of 1804, the minister of Spain discovered, that Cabrera had, in the city of Philadelphia, forged his name to several drafts upon the Bank of Pennsylvania, which the Bank had, inadvertently paid; on which the Minister

addressed the Governor with a requisition, that Cabrera should be imprisoned, subject to the orders of his Catholic Majesty. The Governor accordingly issued a precept to the Sheriff of the city and county of Philadelphia, to arrest Cabrera and confine him in the debtor's apartment. At first, Cabrera was desirous to avoid the jurisdiction of the United States, and to refer his cause to the decision of his own sovereign; but changing his sentiments, on that point, he applied to the Minister of Spain, for permission to wave the diplomatic privilege, and to receive his trial in a court of Pennsylvania. The permission was granted, and Cabrera was committed by a Magistrate for trial.

During the transaction, Cabrera applied to be discharged, by the judicial authority; once upon a writ of *Habeas Corpus*, returnable before the circuit court of the United States, and the second time upon a similar writ, returnable before the Chief Justice of the state of Pennsylvania. On a fair hearing before the court and afterwards before the Chief Justice, he was remanded to prison. Upon these facts, a few plain principles of law arise. A public Minister, all the acknowledged members of his Legation, his house and his household, are exempt by the law of nations, and an act of Congress, from the ordinary operation of the municipal laws of the country, to which he is sent. The domicil of the Minister is, in legal contemplation, a part of his own country; and the members of his Legation (except on extraordinary occasions) remain responsible to *their sovereign only*, for their conduct. If a member of the Legation is guilty of an offence, the Minister has a right to imprison him, in his own domicil, and to send the offender to his sovereign for trial; or

if that is impracticable, he has an unquestionable claim upon the comity of the government, near which he resides, for the aid of its officers, and security of its prisons, 'till the offender can be removed to his own country. When such cases occur, however, they are not regarded as cases of *judicial* but of *executive* cognizance.

The Minister of Spain would have addressed himself, no doubt, to the President, if the offence had been committed within the immediate jurisdiction of the United States, but as the law of nations is a part of the law of Pennsylvania, as well as of the United States, the Governor's practical exposition of that law, appears to be in perfect conformity to the authoritative opinions, entertained by the best writers on that subject. On a plain principle of analogy, may not the requisition of the Minister of Spain, be assimilated to the demand of one state government upon another, for the arrest of a fugitive from justice? A compliance with the requisition, is as much the performance of a *Ministerial* duty, and as little the usurpation of a *Judicial* authority, in the one case as in the other. In truth the Governor does not issue his precept for an arrest, in either case, as a judicial, but as an executive magistrate. The practice, however, even if admitted to be erroneous, yet to render it criminal, who will say, that the motive was corrupt, the act unequivocally unlawful, or the effect (while Cabrera breathed only the language of gratitude) oppressive and injurious?

2d. The second branch of the charge under consideration specifies the unlawful interference of the Governor in favor of a convict, to have been "by sending for the keeper of the prison, "and directing him to permit victuals, bedding

" or cloaths, that might be sent to this convict, to " be given to him, although he had been sentenc- " ed to two years imprisonment at hard labor, and " to be fed and cloathed as the law directs,"

Joseph Cabrera was tried and convicted upon the charge of forging the name of the Minister of Spain, by which the Bank of Pennsylvania had been defrauded of 1600 dollars; and the regular sentence of the law was pronounced. This unfortunate man had been distinguished by his sovereign, was allied to a virtuous and honourable family in Spain, and had been well received in the society of America. The offence, which he committed, was believed to be the only taint upon his private character; and his fate excited general compassion. The Minister of Spain, and many respectable Spaniards, as well as many respectable citizens, united in recommending a pardon, or, at least a mitigation of the rigour of Cabrera's sentence. Upon a principle of comity, which all nations owe to each other, and upon a principle of humanity, which all good men feel for the wretched, the Governor deemed it a duty, as well as a pleasure, upon this recommendation, to interpose. Until, however, the money drawn from the Bank was restored, he thought it politic to withhold a general pardon; and determined to alleviate, but not to release the punishment. He thereupon, gave a verbal intimation of his intention and desire to the keeper of the prison; but, finding that this mode was treated with contumelious opposition and disrespect by the keeper, a pardon was issued under the less seal of the state, on the 23d of July 1805, remitting so much of the " sentence of the court and the punishment there- " by inflicted upon Cabrera, as enjoins and di- " rects, that he shall be kept at hard labor, fed

" and cloathed as the law directs, but no more." Against this qualified pardon, the inspectors of the prison transmitted to the Governor, an unprecedented protest, in terms, which he hopes may rather be ascribed to an ignorance of the law, than to any unworthy motive. Soon afterwards, Cabrera repaid the money obtained from the Bank (a moiety of whose capital belongs to the state) and a general pardon was granted to him, upon condition that he should leave the United States, and never return therein.

Now by the constitution it is declared, that the Governor " shall have power to remit fines and " forfeitures, *and grant reprieves and pardons*, " except in cases of impeachment." Independent of the word *reprieve*, the power to pardon the whole of a criminal sentence, naturally includes the power to pardon any part of it. It is a principle of law, as well as of mathematics, that the greater always includes the less. The practice under the state and the federal governments, as well as in England, has, also, conformed to this construction; and the instances are innumerable where the President, as well as the Governor has pardoned, sometimes upon condition, and sometimes only the more infamous part of the punishment (for instance, whipping, the pillory, and hard labor) leaving the rest, as fine and imprisonment, to be enforced. Thus (taking the examples, in preference, from the federal government) President *Washington* pardoned an Italian Consul who was convicted of sending a threatening letter, with a view to extort money, *on condition*, that he should surrender his exequator. A youth, convicted of larceny, on the high seas, was sentenced to be whipped and imprisoned and, another youth, convicted, by his own con-

fession, of stealing letters, containing Bank notes, from the mail, which he was employed to carry, was sentenced to be whipped and imprisoned at hard labour; but, in both cases, President *Jefferson* remitted the whipping, and the hard labour, without remitting the imprisonment. It would seem, also, that the right to grant *a reprieve*, added to the constitutional power of pardoning, was calculated to prevent all doubt, upon the extent of the Governor's authority, to enforce or to suspend a sentence;—to pardon the offence, or to mitigate the punishment: but it is sufficient, surely, upon the proceeding developement of facts and principles to observe, that the law of the land in this respect, was never doubted, until the Inspectors of the prison of Philadelphia were pleased to resolve, "that, *in their opinion*, the executive is not authorized, by the constitution of "this state, nor by any law, *they are acquainted* "*with*, to grant such a partial pardon." The Inspectors of the prison have usually been esteemed for their benevolence and their vigilance; but, it is unreasonable to expect, from the weight of their own resolution upon the subject, an admission, that either their station, or their studies, have qualified them to be the expositors of the constitution, or the judges of the law.

It is suggested, however, by the board of Inspectors, and the suggestion is adopted by the committee of Impeachment, "that the partial "pardon of Cabrera was an improper interfer-"ence, with the rules and regulations for the go-"vernment of the prison, and the powers vested "in the Inspectors, which will be highly prejudi-"cial to the interests of the Institution." If the Executive Magistrate is constitutionally authorized to mitigate the sentence of a convict, it would

be a sufficient answer to such a complaint, that no act of the General Assembly could grant powers to the Inspectors, nor could the Inspectors, make any rules and regulations, in derogation of that authority. But it must be allowed that all powers are liable to be abused, legislative and judicial, as well as executive; the power of pardoning as well as the power of impeaching. It is therefore, proper to meet the charge on that ground, stipulating only, that there shall be no conclusion from the mere use, to prove a wanton abuse, of the executive power. Now, all that appears on the present occasion, to convert an act of mercy into a crime, is, that in a single instance, under circumstances so peculiar to the case, that their recurrence cannot reasonably be expected; the undoubted right to pardon has been so exercised, as to alleviate the misery of an offender, on the one hand: and on the other, to compel a restitution of the property obtained by the offence. To mitigate the rigor of the general law, in particular cases, is emphatically the object, for which the power of pardon is granted; but when could the power be safely exercised for the executive magistrate, if in a case like the present, he incurs the danger of impeachment and disgrace! In every other case, it would be equally just; in many other cases it would be more plausible; to ascribe to the influence of a pardon, all the real or suppositious mischiefs, which flow from an habitual abuse of the executive authority. But, without the allegation of any actual injury to the community; without a whisper of reproach, or alarm from any individual, and without any possible evil from the precedent; the resulting question may again be asked; who will say, that the Governor's motive has been corrupt; that his con-

duct has been unlawful; or that the mercy shewn to Cabrera is, in truth, pregnant with those dreadful consequences, which the force of imagination has so glaringly depicted?

Third Charge.

" That contrary to the true intent and meaning " of the constitution, and in violation of it, the " Governor appointed Dr. George Buchannan, " Lazaretto Physician of the port of Philadelphia, " by granting him a commission, as an officer " within the county of Delaware, three or four " days before his arrival in this state, although " he had been a *citizen* of Maryland about se- " venteen years immediately preceding his ap- " pointment."

ANSWER.

There are two points of view for examining the present charge: First in relation to the *office*. Second, In relation to *the person* appointed.

1st. In relation to *the office*, the accusation has afforded matter of surprise, on various grounds; for the constitutional language, and the practical exposition, which it has uniformly received seemed to have left no room for doubt upon the subject. But, premising, that two obvious descriptions of offices, are required by the nature of our government; the one for transacting the general business of the Commonwealth; and the other for transacting the peculiar business of the respectiye counties; it is proper to recite the material words of the 8th section of the 2d article: The Governor " shall appoint all officers, whose offices " are established by this constitution, or shall " be established by law, and whose appointments " are not herein otherwise provided for; *but no per- " son shall be appointed to an office within any county, " who shall not have been a citizen, and inhabitan*

"*therein one year next before his appointment.*" The policy and principles of this restriction are confined to a county office, whose institution, objects and operation, are *within the county*; while other positive provisions of the constitution, plainly distinguish between offices, which are to be established *within each county*; and offices which have no such local designation and boundary. That it is declared, "that there shall be a court of "common pleas, orphan's court, register's court, "and a court of quarter sessions of the peace, *for* "*each county*" that "a register's office for the "probate of wills, and granting letters of admi- "nistration, and an office for the recording of "deeds, shall be kept *in each county*;" that "pro- "thonotaries, clerks of the peace and orphan's "courts, recorders of deeds, registers of wills, "and sheriffs, &c. shall keep *their offices in the county-town of the county, in which they respec- "pectively shall be officers*," and (whenever personal residence was deemed necessary, it is also declared) that "judges of the courts of common "pleas, during their continuance in office, shall "reside in the county" for which they are respectively appointed, and that the president of those courts shall reside in their respective districts. But in relation to officers, acting in the general business of the Commonwealth, no place is demarked for keeping their offices; no personal residence at any particular town, or in any particular county, is prescribed *after the appointment*; nor, therefore is it reasonable to suppose, that personal residence in any particular town, or county, would be exacted, *as a previous qualification* even if the terms of the constitution were more ambiguous than has been alledged.

The opposite construction, however, would lead to such political injustice, and inconvenience,

that in deference to the wisdom of the convention, which framed our constitution, it ought not to be adopted. The seat of the state government is not permanently fixed; and whenever it may be, the executive officers must generally attend; while the session of the Supreme court is now alternately held at Philadelphia and Pittsburgh. If, then, the Governor cannot appoint any person to an office *within any county*, of which such person has not previously been a citizen and an inhabitant for the space of a year, it would follow that none but the inhabitants of Philadelphia county could formerly, and none but the inhabitants of Lancaster county can at this time be appointed to the offices of Secretary of the Commonwealth; Receiver General, Surveyor General, and Secretary of the land office; Master of the Rolls; Comptroller and Register General, &c. nor will it be easy to ascertain, from what vicinage the judges of the Supreme Court should be taken. Thus the equal right of the citizens, to enjoy the honors and emoluments of public office would be destroyed; and the injury of the construction, to the public service cannot be better exemplified, perhaps than in the very instance of circumscribing the choice of a Lazaretto Physician for the port of Philadelphia, to the inhabitants of the county of Delaware.

The Lazaretto physician, however, being emphatically an officer of the port of Philadelphia; his office being a department of the board of health, established in the metropolis; and his duties being entirely unconnected with the local police of the county of Delaware; he has always been regarded, in the practical exposition of the constitution, as a general, and not as a particular object of appointment; so that, since the institu-

tion of the office in the year 1794, there has not been a single instance of the appointment of an inhabitant of the county of Delaware, as Lazaretto physician.

2nd. In relation to *the person* appointed, it is proper to state, that Dr. George Buchannan is a native of the United States, whose father, General Buchannan, presided in the courts of the county of Baltimore, both before and since the revolution; and that he was educated at the University of Pennsylvania, and after the usual period of medical study under Dr. Shippen, received the degree of Doctor of Medicine from that institution; that he afterwards went to Edinburg to cultivate the science, in its celebrated seat; that since his return from Europe, he has principally resided in Maryland; that, having married a citizen of Pennsylvania, he had long contemplated a permanent settlement here; and that he was assured, some days before his removal, that the office of Lazaretto Physician would be conferred on him, as soon as his domicil was established in Pennsylvania.

From these facts, it results, that Dr. Buchannan, was a citizen of the United States, at the time of his appointment; and, therefore by the positive term of the Federal compact he was entitled on his arrival in Pennsylvania, "to all privileges and immunities of citizens, in the state." The constitution of the state, neither provides for the naturalization of foreigners, nor the community of privileges and immunities, to be enjoyed by the citizens of other states; but, implicitly leaves both of those important subjects of legislation to the Federal jurisdiction. The citizen of another state, however, can only enjoy the privileges and immunities of Pennsylvania, upon the same con-

ditions that are imposed upon her own immediate citizens. If he wishes to exercise the elective franchise, he must add to the proof of his citizenship, the proof of previous residence and of the payment of taxes, required by the constitution. If he is a candidate for any elective office, his age and residence must be such as the constitution describes. And if he is appointed to a county office, he must bear the qualifications of previous and of subsequent residence. But unless the constitution expressly limits and qualifies the enjoyment of the privileges and immunities of citizenship, it is not in the power of the Legislature, it cannot be in the power of the executive, to enlarge, or to diminish the right of enjoyment, in the case of a citizen of another state, any more than in the case of a citizen of Pennsylvania. Although a citizen of Pennsylvania had been absent in foreign countries, for twenty years, there is nothing in the constitution, to prevent his being appointed Lazaretto physician, on the very day of his return to his country; and if a citizen of another state has equal rights, where is the violation of the constitution, where the high crime "and misdemeanor," to permit him to enjoy them? If indeed it was unconstitutional to appoint Dr. Buchannan, it must, by a parity of reason, and of principle, be un constitutional to hold the appointment; and yet it will not be contended, that Dr. Buchannan is guilty of any offence in accepting the commission, nor that the commission is void.

It is not, therefore, on the ground of a defect of citizenship that Dr. Buchannan's appointment can be condemned; but *personal* objections are offered, and with what decorum of language, or force of argument, it is the province of the House of Representatives to decide. *It has been said,*

that " he is not a citizen at all;" that " he had manifested no interest in, or attachment to, the state," and " that the office was conferred by the Governor, *upon a stranger because he was his son-in-law, as much an alien to our constitution, as if he had been imported from Siberia.*" *It is answered*, that Dr. Buchannan was made a citizen of the United States by his birth, and by the constitution of his country; that the report of the committee of impeachment connot, in opposition to the facts and the law, make him an alien and a stranger; that he and his family have not only the dearest interest in, but have manifested the strongest attachment to the state of Pennsylvania, by the ties of blood, of marriage, and of property, as well as by the ultimate hope and design of residence and of settlement; and that no reason has been assigned (without which a respectful reply cannot be framed) to satisfy the public feeling, and the public faith, why a native citizen of Maryland, or of any other of the sister states, should be denounced by the Legislature of Pennsylvania " as *a stranger*, as *an alien* to our constitution, as much as if he had been *imported* (a term applicable only to servants, or to slaves) from the regions of *Siberia.*

But with these personal objections there has been connected, the collateral fact," that Dr. Buchannan is the son-in-law of the Governor." The Governor affects not an indifference to the law of God, of Nature, and of the Gospel, although he acknowledges his official subjection to the law of society. By the former, he is taught to love and protect his offspring, his family and his friends; but, by the latter, he is forbidden (and only fobidden) to indulge the prediliction, arising from the former, at the expence of the public welfare. In the present instance, no imputation of incapacity,

or negligence has been made ; while the exclusion of all pestilential diseases, from the port of Philadelphia, since Dr. Buchannan's appointment, may be fairly ascribed, in a great degree, to the success of his exertions. If, then, it is not unconstitutional to promote the Governor's private happiness, by the same act, which contributes to the public benefit; if the office of Lazaretto physician, is not constitutionally shut against every citizen, who does not inhabit the county of Delaware ; if a citizen of one of the United States, is a citizen of every other state ; and if no qualification of previous residence is constitutionally required, for the office; who will say, that, on the present occasion, the Governor's motives have been corrupt, or his conduct unlawful.

FOURTH CHARGE.

" That under a precedent, acknowledged to have been derived from the King of Great Britain, and contrary to the express letter of the constitution, the Governor suffered his name to be stamped upon blank patents, warrants on the Treasury, and other official papers, and that too out of his presence."

ANSWER.

The terms of the charge, and the comment of the committee of impeachment, seem to be predicated upon a supposition, that there exists some constitutional rule, or some statutory direction, requiring the use of a quill, dipped in ink, to legitimate the Governor's signature, when affixed to any official document. But all that can be gathered from the constitution, in relation to the subject, is the use of the word *sign*, where the Governor approves a bill, or grants a commission. And, although many Acts of Assembly mention the Governor's *signature*, and sometimes require, that he should *sign* particular instruments; the

form of the signature, and the manner of the signing, are no where designated and prescribed. What then, in plain English, in common sense, and in established law, is an act of *signing*? It is an attestation of a written fact, by affixing to it a mark, a name or a seal. No man will deny, that a cross instead of a name is a valid act of *signing* a private deed; that the initials of a name, or any other abbreviations, are as much a *signature* as writing the name at large; and that a seal, though it is not a sign *manual*, is a *sign* which alone, in some of the most important cases of evidence (as where the Acts of the Legislature of the several states are to be authenticated) proves the verity of the instrument, without the attestation of any public officer. But it remains to ask, why the sign of a mark, or a name may not be affixed at one stroke, as well as of several strokes; by a pen made of silver or brass, as well as a pen cut from a quill; with *a fac simile*, as well as with a pentagraphic machine? Suppose for instance, that a bond or a promissary note were signed with *a fac simile*, would not the obligor, or the drawer of the note, be bound to pay the amount of the engagement, upon proof of this as *his signature?* And if the legal answer, as well as the answer of common-sense and common experience, must be in the affirmative, it is not easy to conjecture, upon what rational distinction, a different interpretation of the same language, shall be adopted on the present occasion. For, in the case of the Chief Magistrate (who is called upon to sign so many public instruments, that a great portion of his time, must be consumed in this merely ministerial agency) the interest of the commonwealth and the accommodation of the citizens peculiarly require, that every lawful facility should be sought and sanctioned. Nor is

the practice of using *a fac simile* pregnant with the dangers and evils, which have been suggested. The stamp is not more susceptible of forgery than a written name; nor is a fraudulent misapplication of the stamp more to be apprehended, than the misapplication of the state seals, which are placed in the custody of the Secretary. Besides, there is no public document to which the Governor's signature is necessary, that is not completely guarded by auxiliary precautions. Land-warrants must issue under the Less Seal, and be attested at the Land-office. Patents must issue under the Great Seal, must be countersigned by the Secretary, and must beenrolled or recorded. Warrants upon the Treasury must be founded on previous statements from the department of accounts; and must be entered in the books of the Comptroller and Register, after they are signed. Commissions and licences can only issue under the public seals, and they must be attested by the proper officers. And even Bills or Resolutions, which have received the Governor's approbation, are presented to the Legislature, with a written message, by the hand of the Secretary of the Commonwealth.

But when the lawfulness of the Governor's signing official documents with *a fac simile* is established, it will still be urged, hypothetically, that negligence in keeping, or indiscretion in applying the instrument, may produce fraud and inconvenience; though an instance of fraud or inconvenience cannot be adduced. *It is affirmed*, indeed, that "the Governor signed warrants and "other official papers in blank; that he did not "always affix the signature himself and that it "was sometimes affixed by other persons, out of "his presence." But to these allegations *it is answered:* 1st. The necessity and the usage of

signing official documents in blank, and depositing them with a confidential public officer, have been long known to almost every citizen, as well as to every public officer, conversant with the business of the general or state government; no law has ever condemned the usage or interdicted its continuance; and several laws, both federal and state, expressly recognize it: as in the federal system, the case of ship's registers, sea letters and passports; and, in the state system, the case of tavern licences. 2d. Though the Governor did not always affix his signature to official papers, with his own hand, it was never affixed, without his express order, and on his behalf. Deprived of the use of both his hands, by a sudden and severe disease, it is inconceiveable in what other mode, the attestation of his name could be given to a public document: and the rule of law is as applicable to this transaction, as to any species of authorized agency, that "he who em-"ploys another to do an act, is to be considered "as doing the act himself." 3d. The evidence, that accompanies the report of the committee of Impeachment, shews with what constant care the Governor preserved the fac simile of his name, in his own custody. "So far was he from letting others have possession of it, that he kept the balls and the stamp in different places, and locked up in different apartments; that if by accident, any person should come across one of them, he would not know where to find the other." "And the Governor had the fac simile with him, when he was absent from the seat of government." The truth then, is, that except on one occasion there is not the slightest proof (and it is impossible to prove) that the fac simile was ever used out of the actual presence of the Governor, even by his

previous directions. But when as the witness solemnly states, " the Governor was in great pain, unable to sit up in bed, and deprived of the use of both his hands," and when " he had been confined to his bed for five weeks, was afflicted with fever, and discovered something like delirium, immediately after he awoke from a sleep;" an occasion occurred, in which it was necessary to intrust the custody of the fac simile to another; and the person chosen was a confidential officer of the government; the same to whom the constitution and laws had entrusted the custody of the public seals, and the records of the executive department. In the hands of the Secretary of the Commonwealth, therefore, the fac simile was naturally and safely placed; and either by himself, or by a clerk within his view, the instrument has been applied to such official papers, as the Governor specifically directed.

But, after all, what symptom of corruption, what violation of the constitution, can be justly charged upon the Governor's open and avowed adoption of an instrument, calculated only to expedite the public business, or to supply an accidental loss of the manual power to write? No illicit motive is assigned; no law has been transgressed; no public evil has ensued; no private injury has been done:—wherefore, then, arraign the act as " a High Crime and Misdemeanor?"

FIFTH CHARGE.

" That the Governor contrary to law, did su-
" percede Dr. James Reynolds as a member of the
" Board of Health by the appointment of Dr.
" James Hutchinson, before the expiration of the
" year designated in the law, as the tenure of his
" commission, and which was so expressed in the
" commission itself."

ANSWER.

The constitutional declaration of rights, expressly interdicts the Legislature, from the creation of any office, "the appointment of which shall be for a longer term than during good behaviour." But the Legislature created the offices incident to "the Board of Health;" and declared, that the members who compose the Board "shall continue in office one year, next ensuing the date of their appointments" The tenure of the office would therefore, be unconstitutional, unless the constitutional qualification (to wit, good behaviour, during the year) was virtually implied; and in justice to the Legislature, as well as in deference to the soundest principles and precedents, such must be the legitimate construction of the law. But the subject presents another clear and decisive aspect. When the Legislature declared, that a member of the Board of Health should continue in office for one year, it was not meant to *enlarge* the tenure of the appointment; but to *limit* its duration; it was not meant to impair the executive authority, in making appointments or removals; but to introduce a principle of rotation, whether it is regarded as an office of burthen, or as an office of profit. Hence (in perfect coincidence with the present exposition, but in palpable collision with the opinion of the committee of Impeachment) an express provision is made in the Act of Assembly to supply a vacancy in the office not merely in the case of "death, sickness, resignation and refusal to serve;" but also in the very case of "*a removal from office.* Now, the case of *a removal from office*, pre-supposes a continuance of the original term of appointment, and the existence of an authority, competent to remove, during such continuance. But it may

be asked, where does that authority reside? It is an axiom of political law, that the power of appointing to office, carries with it as an incident, the power of removing, in all cases not expressly excepted. The members of the Board of Health are appointed by the Governor: There is no express exception of their case from that magistrate's incidental power of removal. And, consequently, the power of removal resides with him. It will not be expected that the commissions of the Board of Health should here be compared with the commissions of the judges; nor shall a moment be wasted to shew the futility of the power of removal, in the case of an annual appointment, if its exercise must be preceded by a conviction, upon an indictment, or impeachment of the officer.

After this view of the law it is deemed proper to represent this cause, which induced the Governor, to remove Dr. James Reynolds from office, that every candid mind may judge of its sufficiency; but in the representation "nothing shall be extenuated nor aught set down in malice." On the 16th of April 1805, Dr. Reynolds was appointed a member of the board of Health, by a commission, which the Governor altered from the general printed form (not, as the committee of impeachment conjecture, under a conviction, that the tenure of the office, was irrevocable by him, but in order to accommodate its terms and tenure to the special words of the Act of Assembly. In August following, four members of the Board formally complained to me of the intemperance and violence of Dr. James Reynolds, which had risen to such excess, that, during the actual session of the Board, he had rudely and outrageously struck one of his colleagues, a gentleman distin-

guished for the mildness and decorum of his manners. With some difficulty the Governor induced the members to suspend, at that time, any further proceeding against Dr. Reynolds, in the hope, that reflection in a temperate hour, would produce some apology, some atonement for his misconduct. After the lapse of a few days, however, the visit of complaint was renewed, and the four visitors alledging that it was impracticable longer to transact business, with Dr. Reynolds, tendered a resignation of their commissions. The summer heat then raged; many cases of pestilential fever had occurred, and there was a general solicitude throughout the city, on account of the discord, that had arisen at the board of health. The members who offered to resign were men of vigilance and experience, possessing the public confidence. Under these circumstances, what alternative was presented to the Governor's choice, but a removal of Dr. Reynolds from office? It was still wished, to reconcile the performance of a public duty, with tenderness for the feelings of the individual to be affected by it; and a friendly letter was written by the Governor's private Secretary, recommending a resignation. Dr. Reynolds refused to acquiesce in the proposition; and his commission was superceded, by the appointment of a successor.

Who, after this recital, can say, that the Governor's motive was corrupt, his conduct unlawful; or the removal of Dr. James Reynolds could be avoided upon any principle of public duty?

SIXTH CHARGE.

"That contrary to the obligations of duty, and the injunctions of the constitution, the Governor offered and authorised overtures to be made to discontinue two actions of the commonwealth

against William Duane and his surety, for an alledged forfeiture of two recognizances of one thousand dollars each, on condition, that William Duane would discontinue civil actions against his son J. B. M'Kean and others, for damages for a murderous assault committed by J. B. M'Kean and others on William Duane."

ANSWER.

It has been intimated in the course of the examinations before the committee of impeachment, that this charge is founded upon overtures of an unlawful compromise, offered by the Governor, through the medium of Messrs. Ingersoll, Dallas, Muhlenburg and Dickerson; but as those gentlemen have explicitly declared, in writing, that they never were *authorised by him* to make any kind of overture upon the subject; and as a motion for taking their depositions was over-ruled, by a majority of the committee; the charge must be considered as resting wholly upon the testimony of Dr. Michael Leib, the chairman of the committee, and William Duane the editor of the Aurora. Every man who appears as a witness should be free from the bias of interest, favor, or prejudice; and on this, his competency and his credit must essentially depend. It is in proof before the House of Representatives, that Dr. Michael Leib, one of the witnesses, had recently threatened, in terms indicating animosity and passion, that "*he would pursue the Governor to the grave.*" It is known to the world, that William Duane, the other witness (besides a general and continued attack upon the Governor's reputation and peace of mind) had, in particular, employed his press, to urge an impeachment, upon the very charges, which he was called upon to establish. And the Grand Inquest of the city of Philadelphia had, before the exam-

ination, indicted both the witnesses, for a conspiracy to corrupt, or to intimidate the Chief Magistrate, from an impartial performance of his duty, in relation the subject of one of the charges. The Governor presumes not, however, to estimate the influence of these, or of any other circumstances, upon the credit of the witnesses; but he solicits particular attention to the nature and operation of the facts, which they deliver as matter, independent of hearsay, and arising from their personal knowledge. Thus William Duane, after representing the propositions made by other persons, adds "the Chairman of this committee made such an overture, on the part of the Governor; that he understood that the other overtures were made at the instance of the Governor; and that the Governor once intimated it to himself *in a mere casual way.*" Dr. Michael Leib after stating some preliminary circumstances, adds that "he waited upon the Governor with a certain jury list, and requested of him a discontinuance of the suits; that the Governor told him, it would be better all the suits should be dropped, meaning those against his son J. B. M'Kean and others, as well as those against William Duane and Dr. Leib and that if Mr. Duane would drop his, those against him should be droped likewise; that Dr. Leib, asked the Governor, whether he wished him to make such a proposition to Mr. Duane? and that the Governor replied in the affirmative, and as nearly as Dr. Leib can recollect, in the following words, "yes, do." Such is the whole foundation which the exparte testimony of Dr. Michael Leib and William Duane at the distance of six years from the date of the occurrence could permit to support a charge, that the Chief Magistrate had *offered* a compromise of "a character

truly dark and alarming" and contrary to the obligations of duty, and the "injunctions of the constitution,!" In truth and in candor, taken with all the aggravations of its commentary, even the evidence proves no more, than the expression of a wish, for the termination of a private feud, waged by the conflicting parties, with the weapons of legal process.

But let both sides be now heard in a succinct narrative of all the facts that are material to the case. In the year 1799, a publication appeared in the Aurora, which asserted in substance, that one of the city troops of light horse, engaged in suppressing the disturbances in the counties of Berks and Northampton, "*lived at free quarters.*" On the return of the troops, the officers repaired, in a body, to the printing office of the Editor, and demanded a specification of the troop intended, with a disclosure of the name of the author of the libel. A violent altercation ensued. And the Editor, refusing the immediate satisfaction which was required, the officers proceeded to inflict a severe and an unlawful personal chastisement. For this injury, indictments were prosecuted againt some of the officers; and after a considerable lapse of time, civil suits were instituted against the rest. During these transactions, William Duane, being charged as the author, or publisher of another libel, had been bound by the Mayor of the city of Philadelphia, in a recognizance with Dr. Michael Leib, as his surety (each in the penalty of $1000, to keep the peace, *and be of good behaviour*, when, therefore, the officers found, that it would be difficult to sustain, either an indictment or a civil suit, upon so indefinite a libel, as to the persons aspersed; and particularly when they had allowed their suits for the libel to be

barred by the statute of limitations, in consequence of the delay, in sueing them for the assault and battery; it was determined to resort to the recognizance, as a legal instrument of retaliation and redress. Upon their suggestion, therefore, corroborated by the proper evidence, that William Duane had broken the condition of his recognizance, by a succession of publications alledged to be false and libellous, suits were commenced against him and his surety by the Attorney General (Mr. Ingersoll) under Governor Mifflin's administration. Thus, it is seen, that while one of the parties to this feud, aimed at reparation for an outrage to the *person;* the other aimed at reparation for an outrage (equally unlawful, and often more injurious) to the *character:* And that, whatever may have been the difference of forms, the adverse suits were alike founded upon *private* applications, and designed for the purpose of *private* justice.

On the election of the Governor in the year 1799, the suits were still depending. As to those instituted by William Duane, the Governor could have no official influence, or control over them: but as to those instituted upon the recognizance, in the name of the Commonwealth, he possessed a discretionary authority, for just reasons, to order them to be discontinued. A reason to be just, in relation to a private controversy, must operate impartially between the parties; and a reason to be just, in relation to the exercise of a public authority, can never, where the cases are similar, lead to the rescue of one citizen from the law, leaving another exposed to all its rigor. Let it be stated, that the officers had instituted a civil suit (as they might have done) for the libel upon their conduct and character; and that William Duane

had prosecuted all the assailants by indictment (as he might have done) what would have been the clamor, if the Governor had discontinued the indictment, without some assurance that the civil suits would also be discontinued? And between the case supposed, and the existing case, where is the real point of discrimination in principle or in fact? But it is the interest of the Commonwealth, that there should be an end to strife and litigation! With that view, cross indictments on the prosecution of individuals, are frequently the subject of composition, and, on the present occasion, a promise to discontinue the civil suits would have been a just reason for the interposition of the executive authority, to discontinue the rest. The adjustment would have been mutually advantageous to the parties; and with respect to the public, it must be remembered, that the laws are as faithfully executed in mercy, as in rigor; by the exercise of discretionary power to pardon and remit, as well as by the enforcement of a punishment, or the exaction of a penalty.

Impressed with these sentiments, the Governor does not hesitate to avow, that he was disposed to yield to the repeated solicitations of Dr. Leib, upon such terms, as were required, by an attention to the rights of others, and were deemed essential to an impartial dispensation of justice. Yet it is averred that no proposition to commute or to compromise the adverse suits ever originated with him, or were by him authorized to be made; for all that he said at any time on the subject, either to Dr. Leib himself, or to those gentlemen, who successively applied on Dr. Leib's behalf, was evidently, by way of answer, to a request, and not by way of overture to a bargain. Thus, to an application through counsel of Dr. Leib, *it*

was replied " that under the circumstancces of the case, the Governor could not reconcile it with the principles of equal justice, to use an official power in favor of one side, which could not be employed (whatever might be the merits of the controversy) for the benefit and relief of the other." To an application through General Muhlenberg, *it was replied*, that there were several adverse suits depending, for similar offences against the laws; and that the Governor could not, he conceived, with propriety comply with Dr. Leib's request, unless the business was generally compromised by the parties. And to the personal application of Dr. Leib himself *it was replied*, (according to his own statement) " that it would be better all the suits should be dropped; that if Mr. Duane would drop his, those against him and Dr. Leib should be dropped likewise; and that the proposition might be mentioned to Mr. Duane." These, and these only, have been the declarations of the Governor: And of these declarations (though obtained upon a solicitation for kindness, and used as a means of destruction) who will say, that the motive was corrupt, that the design was unlawful, that any individual suffered an injury, or that the constitutional discretion of the Governor was perverted and abused?

Gentlemen of the House of Representatives.

Having travelled over a wide field of accusation and defence, I shall only add the expression of a sincere wish, to close my political life in peace with all men. It has been my lot, in the tempestuous seasons of civil conflict, to oppose (what I have honestly thought) the innovations of *anarchy*, as well as the encroachments of *tyranny*; but I trust, that (with all the acknowledged imperfections of my judgment) I have been never actuated in any

private or public pursuit, by envy or malice; by the love of power, or the desire of wealth. Conceiving myself sometimes to be "a man more sinned against, than sinning," the feelings of resentment, and the language of reproach, may for a moment, perhaps have been incautiously indulged; but I have never deliberately done unto others, what I would not in like circumstances, that others should do unto me; nor can I conceive any acts more honorable to the human character, than an atonement for errors, and a forgiveness of injuries. By the influence of these sentiments (emanating from the sacred volumes of religious truth, and enforced by the example of the good and the wise) we may, indeed, hope to see the spirit of party allayed; the pride of private opinion subdued; the harmony of society restored; and the prosperity of our country perpetuated.

Thomas M'Kean.

Lancaster, January 27th, 1808.